



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: July 7, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000016910

[REDACTED]

Dear [REDACTED],

On June 29, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 17, 2017 eligibility determination notice.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: July 7, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016910

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine that you do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective May 1, 2017?

Procedural History

On March 16, 2017, NYSOH received your application for financial assistance.

That day, a preliminary eligibility determination was prepared stating that you were eligible to receive up to \$209.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective May 1, 2017. Your broker also attempted to enroll you into a qualified health plan that day, but was unable to select a plan for your enrollment.

Also on March 16, 2017, your broker spoke to NYSOH's Account Review Unit on your behalf and appealed your inability to enroll into a qualified health plan outside of the open enrollment period.

On March 17, 2017, NYSOH issued an eligibility determination notice consistent with its March 16, 2017 preliminary determination, which in relevant part stated that you do not qualify to select a health plan outside of the open enrollment period for 2017.

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On June 29, 2017, you submitted email correspondence between you and your broker, dated November 4, 2016 through January 31, 2017 (see Documents [REDACTED])

Also on June 29, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. A representative from your healthcare brokerage firm appeared and gave testimony. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) On March 16, 2017, your broker submitted an application for health insurance on your behalf and attempted to enroll you in a qualified health plan.
- 2) You testified, and provided documentation to show, that you began your application with a prior broker from the same health insurance brokerage firm in November 2016. You further testified that, at that time, you requested to be enrolled in health coverage in January 2017 and had numerous communications with the broker in November 2016, December 2016, and January 2017, but the broker never acted on your request. The representative from the brokerage firm testified under oath and corroborated your testimony.
- 3) You testified that you chose to use a brokerage firm that was recommended by [REDACTED] because you have always had health coverage through your employers and applying through NYSOH was new to you.
- 4) You lost prior health insurance coverage through your employer in August 2016, and were penalized by the IRS for not having health insurance coverage throughout 2016.
- 5) You testified that you thought the first broker had processed your application, because there was much discussion about health plan options and you signed documents that you believed meant you would have health insurance coverage as of January 1, 2017.
- 6) You testified that you are appealing because you need health insurance for this year and do not want to face another tax penalty.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan and enrollees may change qualified health plans (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2017, the annual open enrollment period began on November 1, 2016, and extended through January 31, 2017 (45 CFR § 155.410(e)(2)).

Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a qualified health plan, and an enrollee may change their enrollment to another plan. This is generally permitted when a triggering event occurs, such as:

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

(45 CFR § 155.420(d)(4)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420(c)(1)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective May 1, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On March 16, 2017, your broker submitted an application for health insurance on your behalf and requested to enroll you in a qualified health plan. On March 17, 2017, NYSOH issued a notice stating in part that you do not qualify to enroll in a qualified health plan outside of the open enrollment period.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

You testified, and provided documentation to show, that you began your application with a prior broker from the same health insurance brokerage firm as recommended by ██████ in November 2016, and that you requested to be enrolled in health coverage in January 2017. You credibly testified and provided documentation to show that there were numerous communications about health plan options and you signed documentation with the broker that you believed meant you had health insurance coverage as of January 1, 2017. You further testified that this broker never acted on your request and as of February 2017, you began working with another representative from the same brokerage firm, who corroborated your testimony in this regard.

Since the record indicates that your non-enrollment into a qualified health plan was the direct result of inaction by a non-NYSOH entity providing enrollment assistance, you should have been granted a special enrollment period as of your March 16, 2017 application.

Therefore, NYSOH's March 17, 2017 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your March 16, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of your March 16, 2017 application, with a May 1, 2017 enrollment start date at the earliest, because your non-enrollment into a qualified health plan was the direct result of inaction by a non-NYSOH entity providing enrollment assistance. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2017 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

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Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2017 if you did not have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

The March 17, 2017 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your March 16, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of Your March 16, 2017 application, with a May 1, 2017 enrollment start date at the earliest, because your non-enrollment into a qualified health plan was the direct result of inaction by a non-NYSOH entity providing enrollment assistance. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

Effective Date of this Decision: July 7, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied you a special enrollment period.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

Your case is being sent back to NYSOH to allow you to enroll into coverage as of May 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You will be responsible for any premium payments for any months you are enrolled into coverage.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 17, 2017 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your March 16, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of Your March 16, 2017 application, with a May 1, 2017 enrollment start date at the earliest, because your non-enrollment into a qualified health plan was the direct result of inaction by a non-NYSOH entity providing enrollment assistance. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of May 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You will be responsible for any premium payments for any months you are enrolled into coverage.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您免费提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

বাংলা (Bengali)

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

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Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. y&b&tumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

שׂוֹדֵשׁ (Yiddish)

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דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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